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No. 07-1458

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IN THE

Supreme Court of the United States

JOSEPH DEAN, ET AL.,
Appellants,

v.

LARRY LEAKE, ET AL.,
Appellees,

and

NORTH CAROLINA STATE CONFERENCE OF BRANCHES OF THE NAACP
Appellee-Intervenor.

On Appeal from the United States District Court for the Eastern District of North Carolina

MOTION TO DISMISS OR AFFIRM FOR APPELLEE-INTERVENOR

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July 23, 2008

QUESTIONS PRESENTED

1. Whether this Court lacks jurisdiction over the present appeal because Appellants' notice of appeal was untimely filed.

2. Whether the district court abused its discretion when it denied Appellants' motion for a preliminary injunction after finding that substantial harm to the public interest would ensue if the motion were granted, and that North Carolina was not required to use corrected census data when it completed a court-ordered redistricting of the North Carolina General Assembly in 2003.

RULE 29.6 STATEMENT

The North Carolina State Conference of Branches of the NAACP is a § 503(c)(4) affiliate of the National Association for the Advancement of Colored People, Inc., which is a not-for-profit corporation organized under the laws of New York and does not issue shares to the public.

TABLE OF CONTENTS

Page

QUESTIONS PRESENTED i

RULE 29.6 STATEMENT ii

TABLE OF CONTENTS iii

TABLE OF AUTHORITIES v

STATEMENT 1

SUMMARY OF ARGUMENT 8

ARGUMENT 10

I. The Appeal is Untimely. 10

II. Reviewing or Reversing the District Court's Denial of Appellants' Preliminary Injunction Motion Is Unnecessary and Premature While *Bartlett v. Strickland* is Pending in this Court. 16

III. The District Court Did Not Abuse Its Discretion in Refusing to Grant the Motion for a Preliminary Injunction. 18

A. The District Court Did Not Abuse Its Discretion in Weighing the Interests. 18

B. North Carolina Was Not Required to Use Data Other than the Official P.L. 94-171 Data Provided by the Census Bureau When It Completed the 2003 Redistricting Process. 20

1. This Court Has Approved the Use of P.L. 94-171 Data for Mid-Decade Redistricting. 21

2. The Use of CQR Program Data Would Not Have Helped to Achieve Equality Among the Legislative Districts..... 25

C. Without Any Credible Evidence that the North Carolina General Assembly Acted in Bad Faith, the District Court Did Not Abuse Its Discretion in Denying the Preliminary Injunction. 29

CONCLUSION 31

APPENDIX

District Court Order (Jan. 28, 2008) 1a

Census Bureau Website Screenshot 4a

Census Bureau Website Text..... 6a

TABLE OF AUTHORITIES

CASES

Page

Abrams v. Johnson, 521 U.S. 74 (1997) 22, 24, 25

Ashcroft v. American Civil Liberties Union, 542 U.S. 656 (2004) 19

Bartlett v. Strickland, 128 S. Ct. 1648 (2008) (order granting writ of certiorari) 9, 10, 17

Bowles v. Russell, 127 S. Ct. 2360 (2007) 16

Brown v. Thomson, 462 U.S. 835 (1983) 21

Commissioner v. Bedford's Estate, 325 U.S. 283 (1945) 13

Connor v. Finch, 431 U.S. 407 (1977) 26

Daggett v. Kimmelman, 580 F. Supp. 1259 (D.N.J. 1984) 23

Department of Commerce v. U.S. House of Representatives, 525 U.S. 316 (1999) 27

Doran v. Salem Inn, Inc., 422 U.S. 922 (1975) 19

FTC v. Minneapolis-Honeywell Regulator Co., 344 U.S. 206 (1952) 14

Gaffney v. Cummings, 412 U.S. 735 (1973) 25

Georgia v. Ashcroft, 539 U.S. 461 (2003) 7, 23

Goldstein v. Cox, 396 U.S. 471 (1970) 11

Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal, 546 U.S. 418 (2006) 19, 20

Griggs v. Provident Consumer Discount Co., 459 U.S. 56 (1982) 16

Karcher v. Daggett, 462 U.S. 725 (1983) ... 9, 23, 25, 29

Kirkpatrick v. Preisler, 394 U.S. 526 (1969) 27

LULAC v. Perry, 126 S. Ct. 2594 (2006) 22, 23, 24

Lopez v. Monterey County, 525 U.S. 266 (1999) 29

Mahan v. Howell, 410 U.S. 315 (1973) 21, 22

McLish v. Roff, 141 U.S. 661 (1891) 18

Munaf v. Green, 128 S. Ct. 2207 (2008) 18

Pender County v. Bartlett, 649 S.E.2d 364 (N.C. 2007), *cert. granted sub nom Bartlett v. Strickland*, No. 07-689, 128 S. Ct. 1648 (2008) 2, 3, 6, 16

Purcell v. Gonzalez, 127 S. Ct. 5 (2007) (per curiam) 15, 19, 20

Reynolds v. Sims, 377 U.S. 533 (1964) 21, 23, 28

Roman v. Sincock, 377 U.S. 695 (1964) 21, 26

Stephenson v. Bartlett, 562 S.E.2d 377 (N.C. 2002) 2, 5

Stephenson v. Bartlett, 582 S.E.2d 247 (N.C. 2003) 2, 5

Thornburg v. Gingles, 478 U.S. 30 (1986) 16

United States v. Hark, 320 U.S. 531 (1944) 13, 14

Wesberry v. Sanders, 376 U.S. 1 (1964) 22

Wisconsin v. City of New York, 517 U.S. 1 (1996) 26

Wise v. Lipscomb, 437 U.S. 535 (1978) 8

STATUTES

13 U.S.C. § 141(c) 21
13 U.S.C. § 141(e)(2) 27
28 U.S.C. § 1253 11
28 U.S.C. § 2101(b) 1, 10, 11
42 U.S.C. § 1973c 29
2003 N.C. Sess. Laws (Extra Session) 434 1

RULES

Sup. Ct. R. 18.1 10
Sup. Ct. R. 18.3 15

REGULATIONS

28 C.F.R. § 51.28 29
28 C.F.R. Part 51 App. 29

OTHER AUTHORITIES

Brief of Travis County Appellants, *LULAC v. Perry*, 126 S. Ct. 2594 (2006) 22, 23

Census 2000 Count Question Resolution Program, 66 Fed. Reg. 35,588 (July 6, 2001) 4

U.S. Census Bureau, *North Carolina Quick Facts* 24

U.S. Census Bureau, *Strength in Numbers: Your Guide to Census 2000 Redistricting Data from the U.S. Census Bureau* (2000) .. 3, 4, 27

STATEMENT

In this case, the latest in a string of challenges contesting the propriety of North Carolina's post-2000 Census redistricting efforts, Appellants seek to enjoin the use of the districts used for state legislative elections conducted during the 2004 and 2006 election cycles, and during the most recent primary election on May 6, 2008. In November 2007 – four years after the districting plans at issue took effect and with the 2010 census fast approaching – Appellants brought this suit, alleging, *inter alia*, that the plans violated the Fourteenth Amendment's one-person, one-vote requirements, and simultaneously moved for a preliminary injunction. Following extensive briefing by all parties and a hearing, the district court denied the motion on January 28, 2008.

Appellants then failed to timely appeal that judgment within 30 days as required by 28 U.S.C. § 2101(b). In fact, they filed their notice of appeal 52 days after the district court order. The 30 day requirement is jurisdictional, and Appellants' failure to comply with it deprives this Court of jurisdiction. In addition, this appeal fails to raise any issue warranting plenary review by this Court. Appellee-Intervenor North Carolina State Conference of Branches of the NAACP therefore moves to dismiss this appeal or to affirm the judgment below.

The 2000 Round of Redistricting for North Carolina's General Assembly.

The General Assembly adopted the state legislative redistricting plans at issue here in 2003, following extensive state court litigation concerning compliance with the North Carolina Constitution. *See* 2003 N.C. Sess. Laws (Extra Session) 434 §§ 1-4,

12 (the "2003 plans"); *Stephenson v. Bartlett*, 562 S.E.2d 377 (N.C. 2002) ("*Stephenson I*").[1] The 2003 plans were used in the 2004 and 2006 election cycles, and in the May 6, 2008, primary.

Stephenson I considered whether the North Carolina Constitution's Whole County Provisions (the "WCP") had force and effect or were preempted by federal law, particularly the Voting Rights Act of 1965 ("VRA") and the federal constitutional one-person, one-vote requirements. The court held that "[f]ederal law . . . preempts the State Constitution only to the extent that the WCP actually conflicts with the VRA and other federal requirements relating to state legislative redistricting and reapportionment." *Id.* at 396.

In May 2004, a case concerning the proper interpretation of the VRA was filed in North Carolina state court. *Pender County v. Bartlett*, 649 S.E.2d 364, 367 (N.C. 2007), *cert. granted sub nom. Bartlett v. Strickland*, No. 07-689, 128 S. Ct. 1648 (2008). The North Carolina Supreme Court resolved the case in August 2007, holding that the VRA requires the use of single member districts that provide a minority community with the opportunity to elect a candidate

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[1] In November 2001, the North Carolina General Assembly completed redistricting maps in the normal course. *Stephenson I*, 562 S.E.2d at 381. Those plans were, however, immediately challenged on state constitutional grounds. *Id.* Following remand from the North Carolina Supreme Court, a state trial court adopted interim redistricting plans for the 2002 election cycle after finding that plans drawn by the General Assembly did not comply with *Stephenson I*. *Stephenson v. Bartlett*, 582 S.E.2d 247, 249 (N.C. 2003) ("*Stephenson II*"). Next, the North Carolina Supreme Court affirmed the trial court's finding, *id.* at 254, and the General Assembly adopted the 2003 plans.

of choice only when the minority community constitutes at least 50 percent of the district.[2] *Id.* at 374. In recognition that this holding might again require the wholesale redrawing of the North Carolina House and Senate maps, the court held that the General Assembly did not have to undertake redistricting until 2009 given the substantial disruption to the 2008 election cycle that redistricting would create. *Id.* at 376.

Census Data for Redistricting

Every 10 years, the U.S. Census Bureau conducts the federal decennial census and reports data to the states for use in legislative redistricting. Pub. L. 94-171, 89 Stat. 1023 (1975), *codified at* 13 U.S.C. § 141(c). These comprehensive legislative redistricting data are commonly known as "P.L. 94-171 data," and were compiled under the Census 2000 Redistricting Data Program in a multi-phase process. U.S. Census Bureau, *Strength in Numbers: Your Guide to Census 2000 Redistricting Data from the U.S. Census Bureau* 4 (2000), http://www.census.gov/rdo/pdf/strenghth2.pdf.

A P.L. 94-171 data file includes population and demographic data, including race, ethnicity and voting age, at the census block level, the smallest unit of data available.[3] *Id.* at 5, 8. It is

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[2] This Court granted certiorari to review that decision on March 17, 2008. 128 S. Ct. 1648 (2008).

[3] Census blocks are "normally bounded by streets or other prominent physical features or by the boundaries of geographic areas. They may be as small as a typical city block bounded by 4 streets or as large as over 100 square miles in some rural areas. Blocks are identified by a four-digit number, unique within Census 2000 census tracts. Nationally, blocks average

comprehensive, as it provides detailed information about the number of people in the state and locates them within census blocks. *Id.* at 6-9.

Following the 2000 census and provision of P.L. 94-171 data in 2001, the Census Bureau implemented the Count Question Resolution program ("CQR program"), which allows local governmental entities to challenge the accuracy of census housing and group quarter counts. The Census 2000 Count Question Resolution Program, 66 Fed. Reg. 35,588 (July 6, 2001). The types of challenges available under the CQR program were limited, and corrections would "not be incorporated into subsequent data products for Census 2000." *Id.* at 35,593. The CQR program was *not* designed to provide state entities responsible for redistricting with updates or changes to the P.L. 94-171 data. *Id.* at 35,593 ("The Census Bureau will not change the apportionment or redistricting counts to reflect corrections resulting from the CQR process. In accordance with the law . . . the counts required for redistricting were delivered to the states by April 1, 2001.").

When the Census Bureau provided municipalities with corrections to their population totals under the CQR program, the notices specifically said "[c]ensus counts used for Congressional apportionment and legislative redistricting and the Census 2000 data products will remain unchanged." *See, e.g.*, J.S. App. 63. CQR program letters merely include changes to population totals without the comprehensive

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about 100 persons each." *Strength in Numbers: Your Guide to Census 2000 Redistricting Data from the U.S. Census Bureau* at 8.

information provided in a P.L. 94-171 data file. *See, e.g., id.*

In North Carolina, at varying times over the course of the entire program, 88 municipalities received notices concerning their population totals under the CQR program. App. 4a-6a.[4] The largest single adjustment concerned the mistaken double-counting of a dormitory at the University of North Carolina at Chapel Hill. *See id.* The Census Bureau forwarded copies of those letters as they were issued to the General Assembly. *See, e.g.*, J.S. App. 63. Following the conclusion of the CQR program, block level data concerning these changes were distributed on June 10, 2004. App. 5a.

Procedural Background

Plaintiffs-Appellants brought their one-person, one-vote challenge in November 2007, roughly four years after the challenged districting plans took effect in 2003, and as the 2010 census was fast approaching.[5] With their complaint, they filed a motion for a preliminary injunction, alleging that the North Carolina House and Senate districting plans violated the Fourteenth Amendment's one-person, one-vote requirements. To remedy the alleged violation, they requested that the district court enjoin use of the 2003 plans – already used in the 2004 and

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[4] A report including all 2000 CQR program corrections for North Carolina is available at http://www.census.gov/prod/cen2000/notes/blks-37.xls. An excerpt of that report was submitted to the district court, and is reproduced in Appendices B & C. *See* App. 4a-6a.

[5] Plaintiffs-Appellants' counsel, Robert N. Hunter, represented amici in *Stephenson I*, 562 S.E.2d at 381, and was co-counsel for the plaintiffs in *Stephenson II*, 582 S.E.2d at 247.

2006 election cycles – and replace them with maps that accord with their interpretation of the North Carolina Supreme Court's ruling in *Pender County v. Bartlett* – the very remedy that the North Carolina Supreme Court said would be too disruptive to implement in advance of the 2008 election. *Bartlett*, 649 S.E.2d at 376.

Defendants filed a memorandum in opposition to Plaintiffs-Appellants' motion for a preliminary injunction on December 18, 2007. On the same day, the State Conference of Branches of the NAACP moved to intervene as a defendant. Chief Judge Flanagan granted the motion to intervene on January 4, 2008.

On January 25, 2008, the three-judge panel conducted a hearing on the preliminary injunction motion at which all parties presented argument. Three days later, the court issued an order denying the preliminary injunction (the "January 28 Order," reproduced as Appendix A). The order stated,

> where preliminary injunctions are extraordinary remedies involving the exercise of very far-reaching power to be granted only sparingly and in limited circumstances, in its discretion, the court finds plaintiffs have not satisfied the weighty burdens upon them. The court will set forth its findings and conclusions in separate memorandum opinion [*sic*]. Accordingly, plaintiffs' motion for preliminary injunction is DENIED.

App. 2a-3a (internal quotation marks and citations omitted).

Plaintiffs-Appellants did not file a notice of appeal following the January 28 Order, even though filing deadlines for the primary elections they sought to enjoin were pending in February. On March 17, 2008, the court issued a memorandum opinion to, in the court's words, "explain our reasoning." J.S. App. 1.

The court first found that, "where Plaintiffs allege solely constitutional harms, determination of irreparable harm requires determining Plaintiffs' likelihood of success on the merits." J.S. App. 14.

The court next considered Plaintiffs-Appellants' assertion that they had established a prima facie violation of one-person, one-vote requirements because without the use of corrected census data, the 2003 districts deviated from the ideal by more than 10%. That is, the absolute value of the district with the largest negative deviation from the ideal district size, plus the absolute value of the district with the largest positive deviation from the ideal district size was greater than 10%. In consideration of this Court's precedents, however, the court "conclude[d] that the General Assembly [wa]s permitted, but not required, to use the corrected data." J.S. App. 18.

It also noted:

> This Court recognizes the fact that states conducting redistricting years after the decennial census are operating under a legal fiction. *See Georgia v. Ashcroft*, 539 U.S. 461, 488 n.2 (2003) ("[B]efore the new census, States operate under the legal fiction that even 10 years later, the plans are constitutionally apportioned."). Those circumstances, as well as the inherently legislative nature of the

> redistricting function, support the granting of deference to the judgment of the General Assembly in deciding which data to use. *Wise v. Lipscomb*, 437 U.S. 535, 539 (1978) ("The [Supreme] Court has repeatedly held that redistricting and reapportioning legislative bodies is a legislative task which the federal courts should make every effort not to pre-empt.").

J.S. App. 18. Accordingly, without showing a likelihood of success on the merits, Plaintiffs could not claim that they had been irreparably harmed. *Id.*[6]

The court further found that "[a]ny delay [in the 2008 election schedule] could affect the ability of North Carolinians to participate meaningfully in the presidential primaries, and granting a preliminary injunction will otherwise disrupt an orderly election process." J.S. App. 21. It ultimately concluded, therefore, that "the public interest in holding an orderly election would be substantially harmed if preliminary injunctive relief were granted," and this justified its denial of the preliminary injunction motion. *Id.* This appeal ensued.

SUMMARY OF ARGUMENT

The district court did not abuse its discretion when it determined that the substantial harm to the public interest that would ensue should the 2008

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[6] The court also considered and rejected Appellants' "little more than conclusory" accusations that North Carolina acted in bad faith when it declined to use the corrected census data in 2003. J.S. App. 20.

election cycle be disturbed outweighed the harm Appellants alleged would result from the use of districts created with 2000 census data officially designated for redistricting. In fact, Appellants suffered no harm at all because North Carolina's use of P.L. 94-171 data for mid-decade redistricting does not offend one-person, one-vote principles. Instead, this Court long ago held that States operate under a legal fiction that does not require them to redistrict with anything other than official census data, even though "census data are not perfect," and "population counts for particular localities are outdated long before they are completed." *Karcher v. Daggett*, 462 U.S. 725, 732 (1983). The minor corrections yielded by the CQR program do not disturb those settled principles.

Where, as here, block-level CQR program data were unavailable at the time the General Assembly redistricted, the selective population adjustment of some North Carolina municipalities, but not others impacted by the CQR program would have introduced arbitrariness into the redistricting process. Moreover, the Fourteenth Amendment does not require North Carolina to pursue the fiction of ensuring population equality among legislative districts based on eight-year-old data, while ignoring the much larger imperfection stemming from the state's population growth of more than 800,000 since those data were collected.

In addition, to do so would leave North Carolina in a quandary because the standards governing state legislative redistricting are unclear. This Court has agreed to hear *Bartlett v. Strickland*, on writ of certiorari to the North Carolina Supreme Court, this

fall. 128 S. Ct. 1648. That case will answer a fundamental question about the scope of the Voting Rights Act's protections. While that legal standard is in flux, elections must go on in North Carolina.

Nevertheless, a dismissal now does not foreclose the possibility of Supreme Court review of the merits at a later point because this Court will have an opportunity to consider the one-person, one-vote claim following a final disposition in the district court.

Although the Court could easily dispose of Appellants' arguments on the merits by summary affirmance, that path is unavailable because it lacks jurisdiction over the case. This appeal is untimely. Appellants did not file a notice of appeal until long after the deadline for doing so had passed. The district court's January 28 Order, in which it entered judgment on the preliminary injunction motion, triggered 28 U.S.C. § 2101(b)'s mandatory and jurisdictional requirement that Appellants file notice of their appeal within 30 days had they wished to seek this Court's review. Because Appellants failed to do so, this appeal must be dismissed.

ARGUMENT

I. The Appeal Is Untimely.

A direct appeal to this Court must be taken within 30 days of an interlocutory order. *See* Sup. Ct. R. 18.1; 28 U.S.C. § 2101(b). Here, the three-judge district court issued its order denying Appellants' motion for a preliminary injunction on January 28, 2008. App. 1a-3a. Having filed their notice of appeal on March 20, 2008 – 52 days after the court issued its

order denying the motion – Plaintiffs' appeal is untimely and this Court lacks jurisdiction to hear this case.

Every statute governing this Court's jurisdiction over direct appeals makes clear that the entry of an *order* granting or denying relief is the event that triggers the filing deadline for a notice of appeal. *See* 28 U.S.C. § 1253 ("[A]ny party may appeal to the Supreme Court from *an order granting or denying*, after notice and hearing, an interlocutory or permanent injunction in any civil action, suit or proceeding required by any Act of Congress to be heard and determined by a district court of three judges." (emphasis added)); *id.* § 2101(b) ("Any other direct appeal to the Supreme Court which is authorized by law, from a decision of a district court in any civil action, suit or proceeding, shall be taken within thirty days from the *judgment, order or decree*, appealed from, if interlocutory, and within sixty days if final." (emphasis added)). Accordingly, Appellants would have had to file a notice of appeal within 30 days of the district court's January 28 Order denying their motion for a preliminary injunction.[7]

Here, the January 28 Order in no uncertain terms denied Appellants' motion for a preliminary injunction, and foreclosed completely any further consideration of Appellants' request for relief. It stated that Appellants' motion was "DENIED," App. 3a, because they "ha[d] not satisfied the weighty

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[7] An order denying a motion for a preliminary injunction is an interlocutory one. *See Goldstein v. Cox*, 396 U.S. 471, 478 (1970) ("[O]ur jurisdiction over interlocutory orders under § 1253 is confined to orders granting or denying a preliminary injunction.").

burdens upon them" to justify the "extraordinary remed[y]" of a preliminary injunction. App. 2a (internal quotation marks and citation omitted). At that point, Section 2101(b)'s limited time period for filing a notice of appeal began to run, and the notice of appeal filed by Appellants on March 20 was untimely because it was lodged with the court more than 30 days after January 28.

Appellants state in their notice of appeal that they seek review of the district court's "second order and memorandum opinion" denying their motion for a preliminary injunction in an effort to shift the date for determining the timeliness of its appeal pursuant to § 2101(b). However, such renaming of the order does not cure their appeal's jurisdictional defect. Indeed, no such "second order" exists. Instead, on March 17, 2008, the district court issued a memorandum opinion to, in the court's words, "explain [its] reasoning" for denying the preliminary injunction motion in the January 28 Order. J.S. App. 1. Appellants' suggestion that the district court's March 17 memorandum opinion has any bearing on the timeliness of its notice of appeal is misplaced.

Although Appellants contend that the district court "entered judgment" on March 17, 2008, that description is plainly erroneous because, as the March 17 opinion explains, the court had already taken that step on January 28, 2008. J.S. App. 31 ("*[W]e issued an order* without accompanying memorandum following the January 25 hearing, denying equitable relief." (emphasis added)). The January 28 Order provided Appellants with clear notice of the outcome of their motion, and provided no indication that the court would further consider their

arguments for the issuance of a preliminary injunction. The court spent the intervening time writing an opinion to elaborate on its reasoning for denying the preliminary injunction, but left no doubt that its January 28 Order was the ruling that made its judgment take effect.

Like the circumstances of another case in which this Court considered a similar question, these facts confirm "the natural meaning yielded by the terms of the 'Opinion' and the 'Order of Mandate' . . . which treats not the 'Opinion' but the 'Order for Mandate' as the order of judgment." *Comm'r v. Bedford's Estate*, 325 U.S. 283, 287 (1945). In *Commissioner v. Bedford's Estate*, the opinion was issued before the order, *id.* at 285, and this Court held that the time to appeal ran from the date of the order, not the date of the opinion. *Id.* at 288. The same rule applies here even though in this case, for good reason, the order was issued first. The January 28 Order allowed the state's primary election process to continue undisturbed and put to rest concerns that the primaries for state legislative seats would be delayed. To ignore these facts and hold that the issuance of the March 17 memorandum opinion was instead the relevant act that started the 30-day clock would be to conclude that the district court issued an "empty order" on January 28. *United States v. Hark*, 320 U.S. 531, 535 (1944). There is no evidence that the district court intended to do so.[8]

In short, the January 28 Order is a "formal judgment," and is, therefore, "prima facie the decision

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[8] The docket sheet also identifies the March 17, 2008, entry as a "Memorandum and Opinion for the Court," *not* an order. (Docket # 61).

or judgment rather than a statement in an opinion or a docket entry." *Id.* at 531, 534-35. Appellants have failed to raise any arguments to disturb that conclusion.

Even if this court were to agree with Appellants that the March 17 opinion is a "second" order, it does not suggest that the period for appeal begins to run anew. The mere fact that an earlier order is re-entered, or revised in an immaterial way does not extend the time for appeal. *FTC v. Minneapolis-Honeywell Regulator Co.*, 344 U.S. 206, 211-12 (1952). This Court dismissed the appeal in *FTC* because the notice of appeal was filed more than 30 days after an initial judgment was entered, even though the lower court later entered a second judgment in the same case. *Id.* As the Court further explained,

> [o]nly when the lower court changes matters of substance, or resolves a genuine ambiguity, in a judgment previously rendered should the period within which an appeal must be taken or a petition for certiorari filed begin to run anew. *The test is a practical one.* The question is whether the lower court, in its second order, has disturbed or revised legal rights and obligations which, by its prior judgment, had been plainly and properly settled with finality.

Id. (emphasis added). Here, the March 17 opinion did not disturb, revise, or otherwise alter the January 28 Order. Therefore, its later issuance provides no justification for extending the time within which to file an appeal.

Further, given Appellants' requested relief, the only sensible course for a timely appeal would have been to seek immediate review of the district court's

order. They sought to enjoin the use of legislative districts for the 2008 primary. J.S. App. 12. Granting the requested relief would require action by February 2008, in time for candidate filing deadlines and preparation for the 2008 primary. *See* J.S. App. 20-21. Therefore, to have a reasonable chance at achieving their requested relief, Appellants would have had to appeal the district court's order immediately.

Moreover, the district court's reasoning would not be necessary for this Court's review. This Court has not hesitated to reverse rulings on preliminary injunctions simply because the lower court has not provided its reasoning in detail. *See, e.g.*, *Purcell v. Gonzalez*, 127 S. Ct. 5, 7 (2007) (per curiam) (vacating Ninth Circuit's order reversing a district court's denial of a preliminary injunction to suspend use of Arizona's voter identification requirement even though the Ninth Circuit had issued only a "bare order").

Finally, Appellants could have easily secured their right to appeal and abided by this Court's jurisdictional requirements by filing their notice of appeal within 30 days of the district court's ruling, and awaiting the district court's ruling before filing their jurisdictional statement. If necessary, they could have received an extension of the deadline to file their jurisdictional statement with this Court while issuance of the district court's memorandum opinion was pending. *See* Sup. Ct. R. 18.3 (allowing a Justice to extend the time within which a jurisdictional statement may be filed).

In sum, because the notice of appeal was not filed until March 20, 2008, more than 30 days after the

district court issued the January 28 Order denying the motion for a preliminary injunction, Appellants have failed to abide by Section 2101's time limits for filing a notice of appeal. This Court confirmed just last year that those limits are "mandatory and jurisdictional." *Bowles v. Russell*, 127 S. Ct. 2360, 2363 (2007) (quoting *Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56, 61 (1982)). Accordingly, the appeal is untimely and must be dismissed for lack of jurisdiction.

II. Reviewing or Reversing the District Court's Denial of Appellants' Preliminary Injunction Motion Is Unnecessary and Premature While *Bartlett v. Strickland* is Pending in this Court.

Appellees Larry Leake, et al., correctly point out that on any normal full briefing schedule, the relief Appellants seek in this appeal will be moot by the time this Court reviews this case. *See* Appellees' Mot. to Dismiss. Even if this Court were to pursue expedited hearing or summarily reverse the District Court's decision to deny preliminary relief, any attempt to redraw North Carolina's legislative districts to correct for updated census data inevitably raises the question of how the state constitutional Whole County Provisions should be read in conjunction with the requirements of Section 2 of the VRA, 42 U.S.C. § 1973. The North Carolina Supreme Court in *Pender County v. Bartlett* ruled that under *Thornburg v. Gingles*, 478 U.S. 30 (1986), Section 2 only protects districts in which minorities make up a majority of the citizen voting age population. 649 S.E.2d at 372. Therefore, any legislative districts that are not covered by Section 5 of the Voting Rights

Act, are less than 50% in minority citizen voting age population, and divide counties more than otherwise required would be need to be redrawn to meet the one-person, one-vote requirement. This Court, however, has granted a writ of *certiorari* to review this decision. *Bartlett v. Strickland*, 128 S. Ct. 1648 (2008).

Any summary action by this Court to grant interim relief to Appellants pending the full disposition of the case on its merits would require elections for the North Carolina General Assembly to be immediately disrupted and postponed to allow a new redistricting plan based on adjusted census data to be drawn and implemented. In doing so, the General Assembly would have to determine how to comply with *Pender County v. Bartlett*, while that decision is being reviewed by this Court. If this Court determines that the North Carolina Supreme Court's interpretation of vote dilution under Section 2 of the VRA was erroneous in any respect, the interim redistricting plan would need to be changed yet again for the 2010 election cycle. This would result in North Carolina voters, candidates and legislators being subjected at a minimum to three new and different redistricting plans over three election cycles – 2008, 2010 and 2012 – for a grand total of six different plans within the decade.

Such perpetual redistricting is unnecessary. When the District Court ultimately rules on the merits of Appellants' one-person, one-vote claim, an appropriate remedy, if necessary, can be implemented for the 2010 election cycle. Similarly, any changes in North Carolina's districts required by the ultimate resolution of *Bartlett v. Strickland* can

be implemented in 2010. If, however, the current plan is constitutional and applies the correct understanding of Section 2 of the VRA, no changes whatsoever will be required until the legislature redistricts in due course following the 2010 Census.

Moreover, given the procedural posture of this case, this Court can review the district court's ruling that the North Carolina General Assembly had the discretion to use the official P.L. 94-171 data without attempting to incorporate piecemeal and incomplete corrections when redrawing its redistricting plan in 2003 once the case has been finally resolved on the merits. Indeed, doing so avoids the specter of piecemeal appeals in this case. *See McLish v. Roff*, 141 U.S. 661, 665-66 (1891) ("From the very foundation of our judicial system the object and policy of the acts of congress in relation to appeals . . . have been to save the expense and delays of repeated appeals in the same suit, and to have the whole case and every matter in controversy in it decided in a single appeal."). Dismissing this appeal on jurisdictional grounds will not deprive Appellants of an ultimate opportunity for review of the merits of their claims.

III. The District Court Did Not Abuse Its Discretion in Refusing to Grant the Motion for a Preliminary Injunction.

A. The District Court Did Not Abuse Its Discretion in Weighing the Interests.

Appellants did not meet their heavy burden of demonstrating the need for a preliminary injunction. "A preliminary injunction is an extraordinary and drastic remedy; it is never awarded as of right." *Munaf v. Green*, 128 S. Ct. 2207, 2219 (2008)

(internal quotation marks and citations omitted). Instead, a district court applies a "stringent" standard to determine whether a plaintiff is entitled to a preliminary injunction: "the plaintiff [is required] to show that in the absence of its issuance he will suffer irreparable injury and also that he is likely to prevail on the merits." *Doran v. Salem Inn, Inc.*, 422 U.S. 922, 931 (1975). However, "a district court must weigh carefully the interests on both sides," particularly where, as here, the issuance of a preliminary injunction would "seriously impair the State's interest." *Id.* As the Appellants demonstrated neither irreparable injury nor the likelihood of success on the merits, the district court correctly reasoned that Appellants were not entitled to a preliminary injunction.

On appeal, review of that decision is limited. *See Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418, 428 (2006); *Doran*, 422 U.S. at 931-32. "This Court, like other appellate courts, has always applied the abuse of discretion standard on review of a preliminary injunction." *Ashcroft v. Am. Civil Liberties Union*, 542 U.S. 656, 664 (2004) (internal quotation marks and citation omitted).

In addition, there are special considerations when an application for a preliminary injunction concerns electoral procedures and comes "just weeks before an election." *Purcell*, 127 S. Ct. at 7. In particular, a court must weigh, "in addition to the harms attendant upon issuance or nonissuance of an injunction, considerations specific to election cases," because "[c]ourt orders affecting elections . . . can themselves result in voter confusion and consequent incentive to remain away from the polls. As an

election draws closer, that risk will increase." *Id.* Accordingly, "deference to the discretion of the district court," is required. *Id.*

Here, the district court was well within its discretion – it gave extensive consideration to Appellants' claims of irreparable harm, but found that precisely the type of harm warned of by this Court would ensue if it granted the preliminary injunction: "Any delay [in the 2008 election schedule] could affect the ability of North Carolinians to participate meaningfully in the presidential primaries, and granting a preliminary injunction will otherwise disrupt an orderly election process." J.S. App. 21 (internal quotation marks and citation omitted). It ultimately concluded, therefore, that "the public interest in holding an orderly election would be substantially harmed if preliminary injunctive relief were granted." *Id.* This finding, reached after careful balancing of the interests on both sides, is entitled to deference, and reveals that the district court did not abuse its discretion in denying to Appellants the "extraordinary" remedy of a preliminary injunction.

B. North Carolina Was Not Required to Use Data Other than the Official P.L. 94-171 Data Provided by the Census Bureau When It Completed the 2003 Redistricting Process.

The conclusion that the district court properly exercised its discretion is further sustained because Appellants have failed, as "the party seeking pretrial relief," to meet "the burden of demonstrating a likelihood of success on the merits." *Gonzales*, 546 U.S. at 428. This Court's jurisprudence leaves no

doubt that P.L. 94-171 data are acceptable for redistricting purposes. In addition, North Carolina's use of CQR program data in 2003 would not have helped to achieve equality among the legislative districts.

1. This Court Has Approved the Use of P.L. 94-171 Data for Mid-Decade Redistricting.

When a state undertakes the decennial redistricting process, it must "make an honest and good faith effort to construct districts, in both houses of its legislature, as nearly of equal population as is practicable," *Reynolds v. Sims*, 377 U.S. 533, 577 (1964), without the "taint of arbitrariness or discrimination." *Roman v. Sincock*, 377 U.S. 695, 710 (1964). "[T]he overriding objective . . . must be 'substantial equality of population among the various districts, so that the vote of any citizen is approximately equal in weight to that of any other citizen of the State.'" *Mahan v. Howell*, 410 U.S. 315, 322 (1973) (quoting *Reynolds*, 377 U.S. at 579). Perfection is not required. *See, e.g.*, *Brown v. Thomson*, 462 U.S. 835 (1983) (upholding Wyoming's state legislative districting plan even though one district was under half of the ideal district size). To meet that objective, a state needs information concerning both the numerosity *and* distribution of its population; that is, it is necessary to know both how many people reside in the state and where they live. Since the 1980 round of redistricting, P.L. 94-171 data have provided both sets of information simultaneously, along with data identifying race, ethnicity and voting age of a population at the block level. *See* 13 U.S.C. § 141(c).

The use of P.L. 94-171 data, the official census data provided to the States for redistricting, meets one-person, one-vote requirements, even for mid-decade redistricting. This Court has approved the use of P.L. 94-171 data repeatedly. *See, e.g.*, *LULAC v. Perry*, 126 S. Ct. 2594 (2006); *Abrams v. Johnson*, 521 U.S. 74 (1997).

In *LULAC v. Perry*, 126 S. Ct. 2594 (2006), this Court considered the propriety of Texas's 2003 mid-decade redistricting undertaken for the sole purpose of gaining partisan advantage. *Id.* at 2606. Although more than two years had passed since the Census Bureau had provided P.L. 94-171 data, Texas used it – without accounting for the corrections yielded through the CQR program. *Id.* at 2611-12. One set of appellants argued that Texas's knowing use of the inaccurate and outdated P.L. 94-171 data violated one-person, one-vote requirements because there, like here, the CQR program had revealed a change to Texas's population that the P.L. 94-171 data did not reflect.[9] *See id.*; Br. of Travis County Appellants at 5 & n.8 (noting that Texas admitted that it used official decennial census data even though the Census Bureau had corrected the 2000 census data before the 2003 redistricting plan took effect). This Court held that Texas's use of P.L. 94-171 data when it completed the 2003 redistricting was constitutional

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[9] As the *LULAC* one-person, one-vote challenge concerned congressional redistricting, Article I, section 2 provided the operative constitutional standard rather than the Fourteenth Amendment's Equal Protection Clause. *See Wesberry v. Sanders*, 376 U.S. 1, 7-9 (1964). "[B]roader latitude has been afforded the States under the Equal Protection Clause in state legislative redistricting," *Mahan*, 410 U.S. at 322, which should apply to North Carolina here.

because "States operate under the legal fiction that their plans are constitutionally apportioned throughout the decade, a presumption that is necessary to avoid constant redistricting, with accompanying costs and instability." *LULAC*, 126 S. Ct. at 2611 (citing *Georgia v. Ashcroft*, 539 U.S. 461, 488 n.2 (2003); *Reynolds*, 377 U.S. at 583).[10]

The same legal fiction entitled North Carolina to use P.L. 94-171 data in its 2003 court-ordered redistricting. The harm alleged by appellants in both cases, *i.e.*, the creation of malapportioned districts due to the use of official census data *known* to be inaccurate, does not lead to the conclusion that P.L. 94-171 data are constitutionally suspect simply because they are used mid-decade. To so decide would destabilize the redistricting system, requiring precisely the "daily, monthly, annual or biennial reapportionment," this Court warned against in *Reynolds*, 377 U.S. at 583, and has consistently rejected. Moreover, if Texas did not violate one-person, one-vote principles when it chose to use P.L. 94-171 data in 2003 for a redistricting plan adopted

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[10] Here, Appellants correctly note that following the *Karcher v. Daggett* litigation concerning the 1980 round of redistricting, New Jersey used census data that included corrections to complete redistricting. *See* J.S. 23-24 (citing, *inter alia*, *Karcher v. Daggett*, 462 U.S. 725 (1983); *Daggett v. Kimmelman*, 580 F. Supp. 1259 (D.N.J. 1984)). In *LULAC*, the Travis County appellants also relied on *Karcher v. Daggett* for their argument that Texas acted unconstitutionally when it used official decennial census data rather than corrected census data for redistricting in 2003. *See* Br. of Travis County Appellants at 5 & n.8. However, as discussed above, this Court rejected that argument. CQR program data was available to Texas in 2003, and this Court approved Texas's decision *not* to use it. *LULAC*, 126 S. Ct. at 2611.

to maximize partisan advantage, *LULAC*, 126 S. Ct. at 2612, surely North Carolina's decision to use P.L. 94-171 data in a court-ordered mid-decade redistricting did not violate one-person, one-vote principles.

And, of course, given that North Carolina's actual population today includes approximately 800,000 more people than it did in 2000[11] – far more than the net difference of 2828 people identified through the CQR program – any districting plans that make use of 2000 census data bear no resemblance to reality, making Appellants' "objections . . . increasingly futile." *Abrams*, 521 U.S. at 100. This Court's description of Georgia in 1997 could well apply to North Carolina today:

> The population of Georgia has not stood still. Georgia is one of the fastest-growing States, and continues to undergo population shifts and changes. In light of these changes, the tinkerings appellants propose would not reflect Georgia's true population distribution in any event. The *Karcher* Court, in explaining the absolute equality standard, acknowledged that "census data are not perfect," and that "population counts for particular localities are outdated long before they are completed." *Karcher* was written only two years from the previous census, however, and we are now

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[11] Census data, with CQR program corrections, indicate that North Carolina's population was 8,049,313 in 2000. App. 4a. According to the most recent data from the Census Bureau, North Carolina's population is 8,856,505. *See* U.S. Census Bureau, North Carolina Quick Facts (2006 estimate), http://quickfacts.census.gov/qfd/states/37000.html

> more than six years from one. The magnitude of population shifts since the census is far greater here than was likely to be so in *Karcher*. These equitable considerations disfavor requiring yet another reapportionment to correct the deviation.

Id. at 100-01 (internal citations omitted). Just as in *Abrams*, Appellants ask this Court to find that the district court abused its discretion when it refused to upend the entire electoral map of North Carolina in pursuit of perfecting a fiction. The Fourteenth Amendment does not require that result.

2. The Use of CQR Program Data Would Not Have Helped to Achieve Equality Among the Legislative Districts.

This pursuit is particularly nonsensical in light of the well-understood fact that *all* census data are "inherently less than absolutely accurate." *Gaffney v. Cummings*, 412 U.S. 735, 745 (1973). In particular, "the well-known restlessness of the American people," means that they are outdated as soon as they are compiled. *Karcher*, 462 U.S. at 732. As this Court has described,

> [p]ersons who should have been counted are not counted at all or are counted at the wrong location; persons who should not have been counted (whether because they died before or were born after the decennial census date, because they were not a resident of the country, or because they did not exist) are counted; and persons who should have been counted only once are counted twice. It is thought that these errors have resulted in a

> net "undercount" of the actual American population in every decennial census. In 1970, for instance, the Census Bureau concluded that the census results were 2.7% lower than the actual population.

Wisconsin v. City of New York, 517 U.S. 1, 6 (1996).[12]

Accordingly, "[t]he census is . . . *at best* an approximate estimate of a State's population at a frozen moment in time." *Connor v. Finch*, 431 U.S. 407, 417 n.13 (1977) (emphasis added). Therefore, just like "the good-faith effort to achieve population equality required of a State conducting intrastate redistricting does not translate into a requirement that the Federal Government conduct a census that is as accurate as possible," the Fourteenth Amendment does not require the pursuit of a perfect fiction years after the decennial census has been completed. *Wisconsin*, 517 U.S. at 16-17 (internal quotation marks and citation omitted).

Further, the use of CQR program data in 2003 would have created different problems. In particular, North Carolina would have relied on census data that was marginally more accurate as to numerosity, but far more incomplete and inconsistent in other equally important ways so as to raise the "taint of arbitrariness and discrimination," *Roman*, 377 U.S. at 710. This Court long ago held that States may

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[12] Moreover, the inaccuracies in census data are particularly likely to impact African-Americans. "The problem of the differential undercount has persisted even as the census has come to provide a more numerically accurate count of the population. In the 1980 census, for example, the overall undercount was estimated at 1.2%, and the undercount of blacks was estimated at 4.9%." *Id.* at 7.

account for mid-decade population shifts not reflected in official census data *only* when "[f]indings as to population trends [can] be thoroughly documented and applied throughout the State in a systematic, not an ad hoc manner." *Kirkpatrick v. Preisler*, 394 U.S. 526, 535 (1969). The use of the CQR program data in November 2003 would not have met that standard.

Although the "decennial census is not *only used* for apportionment purposes," *Dep't of Commerce v. U.S. House of Representatives*, 525 U.S. 316, 341 (1999), P.L. 94-171 data do provide comprehensive information critical to redistricting.[13] It includes *block-level* information on the race, ethnicity and voting age of a state's population. *Strength in Numbers: Your Guide to Census 2000 Redistricting Data from the U.S. Census Bureau* at 9. That is, it provides detailed information about the number of people in the state and locates them within census blocks, whereas CQR program letters do not contain such detailed information. *See, e.g.*, J.S. App. 63. Therefore, under Appellants' approach, North Carolina would have used data from the Census Bureau that not only says "[c]ensus counts used for Congressional apportionment and legislative redistricting . . . will remain unchanged," J.S. App. 63, but fails even to locate with precision where population shifts have occurred. Without such

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[13] Other parts of the Census Act reflect the specificity of certain data products. For example, one section specifically bars the use of mid-decade census data collected for use in administering public benefit programs for apportionment. *See* 13 U.S.C. § 141(e)(2) ("Information obtained in any mid-decade census shall not be used for apportionment of Representatives in Congress among the several States, nor shall such information be used in prescribing congressional districts.").

information, North Carolina would have been unable to achieve "substantial equality ... *among the various districts*," *Reynolds*, 377 U.S. at 579 (emphasis added), because it would not have known precisely within which districts the population was distributed.[14] P.L. 94-171 data, on the other hand, *are* designed specifically for the use to which North Carolina put it in 2003, and the Constitution does not require otherwise.

Moreover, the selectivity of Appellants' proposed remedy to the alleged constitutional violation would create a different and serious problem. Although Appellants focus on the population change revealed by the CQR program in Orange County, 87 other North Carolina municipalities received notices of changes to their populations, App. 4a-5a, and there is no indication that the other changes would have been easy to identify and locate. To account for just one of 88 changes revealed by the CQR program would be both inconsistent and contrary to the general principles of fairness underlying the one-person, one-vote requirements, designed to ensure "substantial" but not perfect, population equality. *See Reynolds*, 377 U.S. at 579. In short, the CQR program provided only limited information on corrections to the 2000 census. North Carolina needed more information to redistrict using consistent standards, and it was not required to rely on information that "was not

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[14] As noted above, the Census Bureau did not provide the CQR program corrections to North Carolina at the block level until June 2004. App. 5a.

available . . . at the time it enacted the plan at issue." *Karcher*, 462 U.S. at 728 n.1.[15]

C. Without Any Credible Evidence that the North Carolina General Assembly Acted in Bad Faith, the District Court Did Not Abuse Its Discretion in Denying the Preliminary Injunction.

The district court did not abuse its discretion in rejecting Appellants' baseless accusation that North Carolina legislators used P.L. 94-171 data in bad faith when they redistricted in 2003. As the court explained, Appellants failed to "provide a link" between their "vague allegations of conspiracy" and the General Assembly's decision to use the original census data in its districting plan. J.S. App. 20. The absence of such a link is particularly relevant in view of the rational reasons to disfavor use of the problematic CQR program data described above. *See supra* at 26-29. Nothing in Appellants' jurisdictional statement undermines the district court's conclusion. In short, Appellants' assertions are supported by only rank speculation, and the district court correctly

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[15] Moreover, the use of P.L. 94-171 data is particularly important for states, like North Carolina, that are covered in whole or in part by Section 5 of the Voting Rights Act and must ensure that their redistricting plans do not result in retrogression of minority voting strength. *See* 42 U.S.C. § 1973c. Since at least 1975, 40 North Carolina counties have been covered jurisdictions under Section 5. *See* 28 C.F.R. Part 51 App. Therefore, North Carolina must obtain preclearance of its state legislative redistricting plans before they may take effect. *See Lopez v. Monterey County*, 525 U.S. 266, 282 (1999). As it provides information on race, ethnicity and voting age at the block level, the use of P.L. 94-171 data facilitates Justice Department review of redistricting plans. *See* 28 C.F.R. § 51.28(a)(4) & (5).

recognized that these vague accusations were "little more than conclusory" in nature. *See* J.S. App. 20.

Not only do Appellants fail to provide evidence of their allegations, but the circumstances under which the General Assembly enacted the 2003 districting plans underscore that Appellants' claims are contrary to common sense. When the Census Bureau released the corrected data, the information first was sent to numerous local and state officials with the disclaimer that the corrected data were *not* to be used for redistricting purposes. *See* J.S. App. 63. The public nature of the release in combination with the disclaimer make it highly unlikely that state legislators covertly hatched a plan to hide already widely available data. To the contrary, opting to redistrict based on data carrying such a warning would have been *more* suspicious.

In sum, given the lack of actual evidence of bad faith and the circumstances under which the 2003 plans were adopted, the district court did not abuse its discretion in denying the preliminary injunction motion on Appellants' bad faith claim.

CONCLUSION

The appeal should be dismissed for lack of jurisdiction. In the alternative, the judgment of the district court should be affirmed.

Respectfully submitted,

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July 23, 2008

APPENDIX

APPENDIX A

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
NORTHERN DIVISION
NO. 2:07-CV-00051-FL-AD-RC

January 28, 2008

ORDER

JOSEPH DEAN, et al.,
Plaintiffs,
v.
LARRY LEAKE, in his official capacity as Chairman of the North Carolina State Board of Elections, et al.,
Defendants.

Before Allyson K. Duncan, United States Circuit Judge, Fourth Circuit; Robert J. Conrad, Jr., Chief United States District Judge for the Western District of North Carolina; and Louise W. Flanagan, Chief United States District Judge for the Eastern District of North Carolina, sitting by designation as a three-judge District Court

This matter, raising questions of federal and state law in the context of electoral apportionment in the North Carolina state election process, came before the court January 25, 2008, for hearing on plaintiffs' motions for preliminary injunction and defendants' motion to hold in abeyance any consideration of the merits of the action, including any responsibility of defendants to answer or otherwise respond to the

complaint until final disposition of a petition for *writ of certiorari* filed with the United States Supreme Court in *Bartlett v. Strickland* 76 U.S.L.W. 3289 (U.S. Nov. 21, 2007)(No. 07-689), seeking review of decision of the North Carolina Supreme Court in *Pender County v. Bartlett*, 361 N.C. 491, 649 S.E.2d 364 (2007).

The motion to hold in abeyance necessarily implicates the court's consideration of the motion for preliminary injunction. Accordingly, the court disposes of the latter filed motion first. Defendants acknowledge several of plaintiffs' claims do not rely on the decision in *Pender County*. The motion for injunctive relief focuses upon these allegations involving dilution of one person one vote and use of incorrect census data. Judicial economy and the public interest do not, as urged by defendants, favor withholding consideration of the issues raised on motion for preliminary injunction until resolution of *Pender County*. The court, in its discretion, DENIES defendants' motion without prejudice to its right to refile should the Supreme Court grant the petition for certiorari. Defendants shall have twenty (20) days from date of entry of this order to answer or otherwise respond to the complaint.

Turing now to the motion for preliminary injunction, where "preliminary injunctions are extraordinary remedies involving the exercise of very far-reaching power to be granted only sparingly and in limited circumstances," *Microstrategy Inc. v. Motorola, Inc.*, 245 F.3d 335, 339 (4th Cir .2001) (quoting *Direx Israel, Ltd. v. Breakthrough Med. Corp.*, 952 F.2d 802, 816 (4th Cir. 1992)), in its

discretion, the court finds plaintiffs have not satisfied the weighty burdens upon them. The court will set forth its findings and conclusions in separate memorandum opinion. Accordingly, plaintiffs' motion for preliminary injunction is DENIED.

Where defendants shall have twenty (20) days from date of the entry of this order to answer or otherwise respond to the complaint, pursuant to the Federal Rules of Civil Procedure 26(f), the parties shall prepare a joint report and plan to be submitted to the court no later than March 10, 2008. Upon its receipt and review, the court shall enter a scheduling order in accordance with Federal Rule of Civil Procedure 16(b), the Local Civil Rules, EDNC, and the court's regular administrative procedures. If either party desires conference with the court prior to entry of the scheduling order, request may be made in the joint report and plan.

SO ORDERED, this 28th day of January, 2008.

FOR THE COURT:

LOUISE W. FLANAGAN
Chief United States District Judge

APPENDIX B

Census Bureau Website Screenshot

http://www.census.gov/prod/cen2000/notes/blks-37.xls

Corrected Census 2000 Total Population, Group Quarters Population, Total Housing Unit, and Vacant Housing Unit Counts for Census Tracts and Blocks

Note: Corrected counts are a result of the Court Ordered Resolution (COR) Program.

Federal Register/Vol. 66, No. 130/Friday, July 6, 2001 (Summary): The COR program is not a mechanism or process to challenge the March 9, 2001 decision of the Secretary of Commerce to release unadjusted numbers from Census 2000 for redistricting purposes; nor is it a mechanism or process to challenge or revise the numbers sent to the President on December 28, 2000 to be used to apportion the U.S. House of Representatives.

The state level census counts in the table are presented, regardless of whether or not there is a COR change to the counts at the state level. Below the state level, the tables will present census counts for all counties (FIPS), county subdivisions, census tracts and blocks in which a COR change has occurred, with one exception: where a COR change occurs in a place that is in more than one county, the table will display census counts for all the county parts, regardless of whether or not each part had a COR change. States with no COR changes (and no tables) are Maine, New Hampshire, and Rhode Island.

| State (FIPS) | County (FIPS) | County Subdivision (FIPS) | Place (FIPS) | Census Tract | Census Block | 2000 Census Counts | | |

Corrected Census 2000 Total Population, Group Quarters Population, Total Housing Unit, and Vacant Housing Unit Counts for Census Tracts and Blocks-cont.

State County County Subdivision Place Census Tract Census Block	State FIPS	County FIPS	County Subdivision FIPS	Place FIPS	Census Tract	Census Block	2000 Census County							
							Tabulation (Original)				Corrected (Revised)			
							Total Population	Group Quarters Population	Total Housing Units	Vacant Housing Units	Total Population	Group Quarters Population	Total Housing Units	Vacant Housing Units
Nashville town, Nash County	37	127		46000			4 309	347	1 751	122	4 417	347	1 793	129
New Bern city, Craven County	37	049		46340			23 128	586	11 094	1 068	23 111	586	11 088	1 063
Newton city, Catawba County	37	035		47000			12 560	233	5 366	361	12 659	336	5 385	381
Oak City town, Martin County	37	117		48080			339	-	182	18	376	-	176	18
Parkton town, Robeson County	37	155		50340			429	-	193	18	429	-	194	18
Pembroke town, Robeson County	37	155		51080			2 399	34	1 043	82	2 661	316	1 043	82
Pinehurst village, Moore County	37	125		51940			9 708	443	5 868	1 158	9 729	482	5 870	1 158
Pine Level town, Johnston County	37	101		52020			1 313	-	652	60	1 319	6	652	60
Pink Hill town, Lenoir County	37	107		52400			521	-	233	27	582	-	245	27
Polkton town, Anson County	37	007		53140			1 195	408	336	39	1 916	1 127	336	39
Princeton town, Johnston County	37	101		53820			1 086	-	529	54	1 090	-	537	55
Raleigh city	37	000		55000			276 093	17 316	120 699	8 091	276 094	17 316	120 700	8 091
Durham County (part)	37	063		55000			-	-	-	-	-	-	-	-
Wake County (part)	37	183		55000			276 093	17 316	120 699	8 091	276 094	17 316	120 700	8 091
Raynham town	37	155		55340			67	-	26	1	72	-	31	1
Rhodhiss town	37	000		56240			366	-	185	18	384	-	195	18
Burke County (part)	37	023		56240			327	-	167	16	312	-	161	16
Caldwell County (part)	37	027		56240			39	-	21	2	72	-	34	2
River Bend town, Craven County	37	049		56710			2 923	124	1 477	134	2 923	124	1 477	134
Rocky Mount city	37	000		57500			55 893	1 164	24 187	2 732	55 977	1 251	24 187	2 732
Edgecombe County (part)	37	065		57500			17 297	42	7 881	922	17 414	158	7 062	823
Nash County (part)	37	127		57500			38 596	1 122	17 086	1 810	38 563	1 122	17 085	1 813
Rutherford College town, Burke County	37	023		58440			1 293	10	570	29	1 303	10	574	29
St Pauls town, Robeson County	37	155		58720			2 137	-	935	78	2 247	-	985	78
St Stephens CDP, Catawba County	37	035		58730			9 439	101	3 683	177	9 429	101	3 679	177
Smithfield town, Johnston County	37	101		62520			11 510	1 335	4 674	257	10 887	692	4 674	257
Stallings town, Union County	37	179		64420			3 169	-	1 222	42	3 171	-	1 217	43
Swansboro town, Onslow County	37	133		66360			1 428	1	770	115	1 459	1	819	141
Taylorsville town, Alexander County	37	003		66960			1 799	156	819	73	1 813	156	827	73
Taylortown town, Moore County	37	125		66960			845	-	337	29	875	-	349	29
Trent Woods town, Craven County	37	049		68340			4 192	-	1 744	52	4 224	-	1 783	98
Trinity city, Randolph County	37	151		68400			8 690	-	2 789	121	8 714	-	2 787	121
Valley Hill CDP, Henderson County	37	089		69840			2 137	151	1 049	158	2 088	19	1 051	158
Wade town, Cumberland County	37	051		70340			480	-	228	24	510	-	234	26
Wadesboro town, Anson County	37	007		70380			3 552	179	1 585	182	3 588	179	1 589	187
Washington city, Beaufort County	37	013		71220			9 583	452	4 399	431	9 619	452	4 415	435
Whiteville town, Martin County	37	117		74220			5 843	246	2 508	156	5 946	246	2 548	196
Wilson's Mills town, Johnston County	37	101		74580			1 291	-	505	40	1 296	-	508	40
Windsor town, Bertie County	37	015		74880			2 283	87	1 060	142	2 324	87	1 100	145
Wingate town, Union County	37	179		74760			2 408	556	825	74	2 466	556	825	74
Winterville town, Pitt County	37	147		75060			4 791	42	1 937	89	4 794	42	1 938	88

- represents zero

Source: Population Division, U.S. Census Bureau, released 8/10/2004

APPENDIX C

Census Bureau Website
http://www.census.gov/prod/cen2000/notes/blks-37.xls

[Reproduction of text on 4a]

Corrected Census 2000 Total Population, Group Quarters Population, Total Housing Unit, and Vacant Housing Unit Counts for Census Tracts and Blocks

Note: Corrected counts are a result of the Count Question Resolution (CQR) Program.

Federal Register/Vol. 66, No. 130/Friday, July 6, 2001 (Summary): The CQR program is not a mechanism or process to challenge the March 6, 2001, decision of the Secretary of Commerce to release unadjusted numbers from Census 2000 for redistricting purposes; nor is it a mechanism or process to challenge or revise the numbers sent to the President on December 28, 2000, to be used to apportion the U.S. House of Representatives.

The state level census counts in this table are presented, regardless of whether or not there is a CQR change to the counts at the state level. Below the state level, the tables will present census counts for all counties, places, county subdivisions, census tracts and blocks in which a CQR change has occurred, with one exception - when a CQR change occurs in a place that is in more than one county, the table will display census counts for all the county parts, regardless of whether or not each part had a CQR change. States with no CQR changes (and no tables) are Maine, New Hampshire, and Rhode Island.